

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GRACE ESTABROOK, ELLEN
HOLMQUIST, and MARGOT
KACZOROWSKI,

Plaintiffs,

v.

THE IVY LEAGUE COUNCIL OF
PRESIDENTS, PRESIDENT AND
FELLOWS OF HARVARD COLLEGE,
TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, and NATIONAL
COLLEGIATE ATHLETIC ASSOCIATION,

Defendants.

Civil Action No. 1:25-CV-10281

**DECLARATION OF JEFFREY A. STURGEON IN SUPPORT OF
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA'S MOTION TO DISMISS**

I, Jeffrey A. Sturgeon, hereby declare and state as follows:

1. I represent Defendant Trustees of the University of Pennsylvania ("Penn") in the above-captioned matter. I am admitted *pro hac vice* to practice before this Court.

2. I submit this Declaration in support of Penn's Motion to Dismiss Plaintiffs' Complaint, ECF No. 64.


3. Attached as **Exhibit A** to this Declaration and Penn's Memorandum of Law in Support of its Motion to Dismiss, ECF No. 67, is a true and correct copy of the 2010 NCAA Policy on Transgender Student-Athlete Participation, retrieved from https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC_TransgenderStudentAthleteParticipationPolicy.pdf, the link provided in Plaintiffs' Complaint at Paragraph 73.

4. Attached as **Exhibit B** to this Declaration and Penn's Memorandum of Law in Support of its Motion to Dismiss, ECF No. 67, is a true and correct copy of the U.S. Department

of Education, Office for Civil Rights, June 23, 2021 “Dear Educator” Letter, “*Letter to Educators on Title IX’s 49th Anniversary*,” retrieved from the U.S. Department of Education website, at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>, and a true and correct copy of the accompanying U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office for Civil Rights, June 2021 fact sheet, “*Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*,” retrieved from the Education Resources Information Center (ERIC) database sponsored by the Institute of Education Science of the U.S. Department of Education, at <https://files.eric.ed.gov/fulltext/ED613280.pdf>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 21, 2025



Jeffrey A. Sturgeon (*admitted pro hac vice*)
Paul Hastings LLP
200 Park Avenue
New York, NY 10166
jeffreysturgeon@paulhastings.com
Telephone: 1(212) 318-6017

Attorney for Defendant Trustees of the
University of Pennsylvania

EXHIBIT A

2010 NCAA Policy on Transgender Student-Athlete Participation

The following policies clarify participation of trans student-athletes* undergoing hormonal treatment for gender transition:

1. A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed gender dysphoria for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.
2. A trans female (MTF) student-athlete being treated with testosterone suppression medication for gender dysphoria for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

Trans student-athletes who are not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with their sex assigned at birth.

- A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A trans female (MTF) student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

*This policy may also apply to student-athletes who identify as non-binary. The same policy requirements apply to student-athletes who identify as non-binary and wish to compete on a men's or women's team.

Note: The 2010 policy language was updated in 2022 to remove outdated language through recommendations provided by the NCAA Board of Governors Committee to Promote Cultural Diversity and Equity and NCAA Committee on Competitive Safeguards and Medical Aspects of Sports. In January 2022, the Board of Governors updated the transgender participation policy. More information on the updated policy is available on [ncaa.org](https://www.ncaa.org).

EXHIBIT B



Letter to Educators on Title IX’s 49th Anniversary Notice of Language Assistance

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa impormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkolsa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

June 23, 2021

Dear Educator:

On this 49th anniversary of the passage of Title IX of the Education Amendments of 1972—our nation’s most powerful legal tool for combating sex discrimination in education—I take this opportunity to highlight a selection of resources available for you to ensure that the education environment you provide is free from sex discrimination in all forms. Among these resources is our recent [public notice](#) clarifying Title IX’s protection against discrimination based on sexual orientation and gender identity.

The U.S. Department of Education’s Office for Civil Rights works to ensure that Title IX’s mandate protects students in all aspects of their education, including recruitment, admissions, and counseling; financial assistance; athletics; protections from sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; discipline; equal access to classes and activities; and treatment of lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) students.

I encourage you to review OCR’s recent report, [Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students](#), in which we address the disparities based on sex, including sexual orientation and gender identity, as well as race, disability, and other characteristics experienced by students both before and during the pandemic in K-12 and postsecondary settings. On this anniversary of Title IX, I recognize the particular vulnerability of LGBTQI+ students and the often overwhelming challenges these students face in education compared to their peers, including feeling less safe, experiencing poor mental health, facing a higher risk of suicide, being more likely to miss school, and facing a disproportionate risk of being homeless.

I also want to bring to your attention OCR’s [public notice](#) based on the Supreme Court’s recent decision in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. ____ (2020), which clarifies that Title IX’s protection against sex discrimination encompasses discrimination based on sexual orientation and gender identity. Specifically, OCR clarifies that the Supreme Court’s decision in *Bostock* applies to the Department’s interpretation of Title IX. In its decision, the Supreme Court explained that “it is impossible to discriminate against a person” because of their sexual orientation or gender identity “without discriminating against that individual based on sex.” *Id.* at 1741. That reasoning applies regardless of whether the individual is an adult in a workplace or a student in school.

Page 2—Letter to Educators on Title IX’s 49th Anniversary

Consistent with this notice, OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department. For more information, please see our accompanying [fact sheet](#) in which OCR and the U.S. Department of Justice’s Civil Rights Division provide examples of the kinds of incidents we can investigate.

OCR has also updated its website to provide the resources mentioned above and to provide additional information and [resources for LGBTQI+ students](#).

On Title IX more generally, you might find it useful to review this [Overview of the Law](#) and these [Answers to Frequently Asked Questions about Sex Discrimination](#).

We realize educators may have questions about the Department’s 2020 amendments to the Title IX regulations, and we appreciate that so many of you shared your insights and experiences during our virtual public hearing on Title IX held on June 7-11, 2021. We are reviewing the comments we received and, [as previously noted](#), anticipate issuing a notice of proposed rulemaking to amend the regulations. In addition, we plan to issue a question-and-answer document to provide additional clarity about how OCR interprets schools’ existing obligations under the 2020 amendments, including the areas in which schools have discretion in their procedures for responding to reports of sexual harassment.

If you have questions or would like additional information or technical assistance, please visit us at www.ed.gov/ocr or contact OCR at 800-421-3481 (TDD: 800-877-8339) or at ocr@ed.gov.

We at OCR share with you the responsibility to ensure that all students have equal access to education, regardless of race, color, national origin, sex, disability, or age. Thank you for all that you do to support all of our nation’s students and to ensure that they have the opportunity to learn and thrive in school.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne B. Goldberg", is written over a light gray grid background.

Suzanne B. Goldberg
Acting Assistant Secretary for Civil Rights



June 2021

A Federal court has “vacate[d]” this document and “enjoined” the Department from “implementing or enforcing” this document against the state of Texas and its respective schools, school boards, and other public, educationally based institutions. See *State of Texas v. Cardona*, No. 4:23-cv-604 (N.D. Tex.) (June 11, 2024). Pursuant to a different Federal court order, the Department has been preliminarily “enjoined and restrained from implementing” this document against the states of Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Tennessee, South Carolina, South Dakota, and West Virginia. See *State of Tenn., et al. v. U.S. Dep’t of Educ.*, No. 3:21-cv-308 (E.D. Tenn.) (July 15, 2022).

Confronting Anti-LGBTQI+ Harassment in Schools

A Resource for Students and Families

Many students face bullying, harassment, and discrimination based on sex stereotypes and assumptions about what it means to be a boy or a girl. Students who are lesbian, gay, bisexual, transgender, queer, intersex, nonbinary, or otherwise gender non-conforming may face harassment based on how they dress or act, or for simply being who they are. It is important to know that discrimination against students based on their sexual orientation or gender identity is a form of sex discrimination prohibited by federal law. It is also important that LGBTQI+ students feel safe and know what to do if they experience discrimination.

Public elementary and secondary schools, as well as public and private colleges and universities, have a responsibility to investigate and address sex discrimination, including sexual harassment, against students because of their perceived or actual sexual orientation or gender identity. When schools fail to respond appropriately, the Educational Opportunities Section of the Civil Rights Division (CRT) at the U.S. Department of Justice and the Office for Civil Rights (OCR) at the U.S. Department of Education can help by enforcing federal laws that protect students from discrimination. CRT and OCR can also provide information to assist schools in meeting their legal obligations.

Examples of the kinds of incidents CRT and OCR can investigate:

A lesbian high school student wants to bring her girlfriend to a school social event where students can bring a date. Teachers refuse to sell her tickets, telling the student that bringing a girl as a date is “not appropriate for school.” Teachers suggest that the student attend alone or bring a boy as a date.

When he starts middle school, a transgender boy introduces himself as Brayden and tells his classmates he uses he/him pronouns. Some of his former elementary school classmates “out” him to others, and every day during physical education class call him transphobic slurs, push him, and call him by his former name. When he reports it to the school’s administrators, they dismiss it, saying: “you can’t expect everyone to agree with your choices.”

A community college student discloses he’s gay during a seminar discussion. Leaving class, a group of students calls him a homophobic slur, and one bumps him into the wall. A professor witnesses this, but does nothing. Over the next month, the harassment worsens. The student goes to his dean after missing several lectures out of fear. The college interviews one, but not all, of the harassers, does nothing more, and never follows up with the student.

An elementary school student with intersex traits dresses in a gender neutral way, identifies as nonbinary, and uses they/them pronouns. The student’s teacher laughs when other students ask if they are “a boy or a girl” and comments that there is “only one way to find out.” The teacher tells the class that there are only boys and girls and anyone who thinks otherwise has something wrong with them. The student tells an administrator, who remarks “you have to be able to laugh at yourself sometimes.”

On her way to the girls’ restroom, a transgender high school girl is stopped by the principal who bars her entry. The principal tells the student to use the boys’ restroom or nurse’s office because her school records identify her as “male.” Later, the student joins her friends to try out for the girls’ cheerleading team and the coach turns her away from tryouts solely because she is transgender. When the student complains, the principal tells her “those are the district’s policies.”



What if a Student Experiences Discrimination in School?

If you have been treated unfairly or believe a student has been treated unfairly—for example, treated differently, denied an educational opportunity, harassed, bullied, or retaliated against—because of sexual orientation or gender identity, there are a number of actions you can take:

1

Notify a teacher or school leader (for example, a principal or student affairs staff) immediately. If you don't get the help you need, file a formal complaint with the school, school district, college, or university. Keep records of your complaint(s) and responses you receive.

2

Write down the details about what happened, where and when the incident happened, who was involved, and the names of any witnesses. Do this for every incident of discrimination, and keep copies of any related documents or other information.

3

If you are not proficient in English, you have the right to **ask the school to translate or interpret information** into a language you understand. If you have communication needs because of a disability, you have the right to receive accommodations or aids and services that provide you with effective communication.

4

Counseling and other mental health support can sometimes be helpful for a student who has been harassed or bullied. **Consider seeking mental health resources** if needed.

5

Consider filing a complaint with the Civil Rights Division of the U.S. Department of Justice at civilrights.justice.gov (available in several different languages), or with the Office for Civil Rights at the U.S. Department of Education at www.ed.gov/ocr/complaintintro.html (to file a complaint in English) or www.ed.gov/ocr/docs/howto.html (to file a complaint in multiple languages).

“All students should be able to learn in a safe environment, free from discrimination and harassment. The Civil Rights Division stands with LGBTQI+ students and will fight to protect their right to an education regardless of who they are or whom they love.”

– Kristen Clarke, Assistant Attorney General for Civil Rights, Department of Justice

“The Department of Education strives to ensure that all students—including LGBTQI+ students—have access to supportive, inclusive school environments that allow them to learn and thrive in all aspects of their educational experience. Federal law prohibits discrimination based on sexual orientation and gender identity, and we are here to help schools, students, and families ensure that these protections are in full force.”

– Suzanne B. Goldberg, Acting Assistant Secretary for Civil Rights, Department of Education

